IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2878 of 2006
With
CRIMINAL MISC.APPLICATION No. 2881 of 2006
With
CRIMINAL MISC.APPLICATION No. 2883 of 2006
With
CRIMINAL MISC.APPLICATION No. 2885 of 2006
With
CRIMINAL MISC.APPLICATION No. 14379 of 2005
With
CRIMINAL MISC.APPLICATION No. 14381 of 2005
With
CRIMINAL MISC.APPLICATION No. 14382 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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DR.PRAVIN K.SWAMY - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SP MAJMUDAR for Applicant(s) : 1,
MS HANSA PUNANI, A.P.P. for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 14/11/2006

COMMON ORAL JUDGMENT

1. As common question of facts and law are involved in the above applications they are decided by this common judgement.

2. By way of the above applications the applicant

herein has prayed for quashing and setting aside the following complaints:

(a) Criminal case No. 876 of 2005 filed before the learned Judicial Magistrate, Vadodara.
(b) Criminal case No. 877 of 2005 filed before the learned Judicial Magistrate, Vadodara.
(c) Criminal case No. 7944 of 2004 filed before the learned Judicial Magistrate, Rajkot.
(d) Criminal case No. 1528 of 2005 filed before the learned Judicial Magistrate, Vadodara.
(e) Criminal case No. 108 of 2005 filed before the learned Judicial Magistrate, Vadodara.
(e) Criminal case No. 110 of 2005 filed before the learned Judicial Magistrate, Vadodara.
(f) Criminal case No. 109 of 2005 filed before the learned Judicial Magistrate, Vadodara.

3. The applicant is a doctor by profession since last 13 years and is working with Wockhardt Hospital at Mulund. He was one of the directors of Kolar Biotech Ltd. The applicant accepted the proposal of Sound Craft Industries Ltd. having its registered office at Dadar (E), Mumbai and three other companies. Viz. (1) Kolar Biotech Ltd., (2) Soundcraft Information Technology Ltd.,

and (3) Adam Comsof Ltd., all having their registered offices at Dadar (E), Mumbai for being on the post of non-executive director on 30th January, 2000 as per mutual agreement. The accused company however never entered into any agreement either written or oral with the applicant.

4. The applicant was not authorised to sign and issue cheque/receipts on behalf of the accused company. He had tendered his resignation on 18.03.2001 and ceased to be the director of the said companies with effect from the said date. The Respondent No. 2 filed the aforesaid Criminal Complaints for offences punishable under Section 138 of Negotiable Instruments Act against the company and others including the applicant.

5. Learned advocate for the applicant submitted that he was never authorised to sign and issue cheques on behalf of the company. He has further submitted that no notice was given to the petitioner and the present complaints are filed against the petitioner without serving him mandatory notice under Section 138 of the Negotiable Instruments Act. He has also submitted that when the cheques were dishonoured the petitioner ceased to be the director of the company as he had resigned prior to that

date. Learned counsel for the applicant has placed reliance on a decision of the Apex Court in the case of Sabita Ramamurty & anr. vs. R.B.S. Channabasavaradhya reported in 2006(9) SCALE 212 and ***S.M.S. Pharmaceuticals Ltd. V. Neeta Bhalla & anr reported in (2005) 8 S.C.C. 89.***

6. Heard learned counsel for the parties. I have perused the materials placed on record. Sub section (1) of Section 141 of the Negotiable Instruments Act reads as under:

> "141. Offences by companies – (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly...

7. In the case of ***Sabita Ramamurty & anr (supra)***, the Apex Court has held that before a person is made vicariously liable it is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of and responsible for the conduct of business of the company.

8. In the case of ***S.M.S. Pharmaceuticals Ltd. V. Neeta Bhalla & anr.*** (supra) it has been held that it is necessary to aver that at the time the offence was committed, the person accused was in charge of and responsible for the conduct of the business of the company. On the facts of the case it is an admitted position that the applicant was not the Director of original accused no. 1 – Company at the relevant point of time. Therefore he could not be associated with the offences in question in any manner whatsoever. Apart from that it is not specifically averred in the complaint the the applicant was in charge and responsible for the conduct of the business at the relevant time. Further there is nothing on record to show that the applicant was served with the mandatory notice. Under the circumstances I am of the view that the complaints against the applicant are bad and illegal and require to be quashed and set aside.

9. In the premises aforesaid the criminal complaints Nos. 876 of 2005, 877 of 2005, 7944 of 2004, 1528 of 2005, 108 of 2005, 109 of 2005 and 110 of 2005 are quashed and set aside qua petitioner. Rule is made absolute accordingly.

(K.S.JHAVERI,J.)

Suresh*